

VI. PROCEDURAL SAFEGUARDS

Establishment of Procedures

The State of Iowa has established and maintained procedures in accordance with IDEA 2004 to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

Types of Procedures

The procedures include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the Iowa Department of Education, the local educational agency, the area education agency (AEA) or any other agency that is involved in the education or care of the child. In the case of a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements; and, in the case of an unaccompanied homeless youth, the local educational agency shall appoint a surrogate.

The State of Iowa shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate. The AEA is responsible for appointing surrogate parents.

(3) Written prior notice to the parents of the child, in accordance with the requirements, whenever the local educational agency proposes to initiate or change; or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with IDEA 2004.

(6) An opportunity for any party to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline shall apply.

(7) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with the requirements (which shall remain confidential)

to the other party, and forward a copy of such notice to the Iowa Director of Education that shall include--

- the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem;
- a proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements.

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with (6) and (7), respectively. Iowa provides a model form in its procedural safeguards brochure for parents and on the department website.

Notification Requirements

The content of prior written notice shall include--

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.

The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the administrative law judge (ALJ) and the other party in writing that the receiving party believes the notice has not met the requirements of IDEA 2004.

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

- an explanation of why the agency proposed or refused to take the action raised in the complaint;

- a description of other options that the IEP Team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- a description of the factors that are relevant to the agency's proposal or refusal.

A response filed by a local educational agency shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate. Except as provided, the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint. The party providing an ALJ notification shall provide the notification within 15 days of receiving the complaint. Within 5 days of receipt of the required notification, the ALJ shall make a determination on the face of the notice of whether the notification meets the requirements and shall immediately notify the parties in writing of such determination.

A party may amend its due process complaint notice only if

- the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held; or
- the ALJ grants permission, except that the ALJ may only grant such permission at any time not later than 5 days before a due process hearing occurs.

The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under the due process hearing section below.

Procedural Safeguards Notice

The State of Iowa provides a parental rights brochure to each AEA to print and disseminate. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents upon initial referral or parental request for evaluation; upon the first occurrence of the filing of a complaint; and upon request by a parent. A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner relating to--

- (A) independent educational evaluation;
- (B) prior written notice;
- (C) parental consent;
- (D) access to educational records;
- (E) the opportunity to present and resolve complaints, including--
 - (i) the time period in which to make a complaint;
 - (ii) the opportunity for the agency to resolve the complaint; and
 - (iii) the availability of mediation;
- (F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (Iowa offers a one-tiered system);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

Mediation

The State of Iowa ensures that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a due process complaint, to resolve such disputes through a mediation process. Iowa calls mediation without requesting a due process hearing a “preappeal conference.” The procedures shall ensure that the mediation process is voluntary on the part of the parties; is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this part; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The State of Iowa may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the State or an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

Iowa maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The State of Iowa shall bear the cost of the mediation process, including the costs of meetings with a disinterested party to encourage the use, and explain the benefits of mediation. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; is signed by both the parent and a representative of the agency who has the authority to bind such agency; and is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

Impartial Due Process Hearing

Whenever a due process hearing complaint has been received, the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State of Iowa. Prior to the opportunity for an impartial due process hearing the local educational agency shall convene a Resolution Session meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint within 15 days of receiving notice of the parents' complaint; which shall include a representative of the agency who has decisionmaking authority on behalf of such agency; which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process.

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.

In the case that a resolution is reached to resolve the complaint at a Resolution Session meeting the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind such agency; and enforceable in any State court of competent jurisdiction or in a district court of the United States. If the parties execute an agreement, a party may void such agreement within 3 business days of the agreement's execution.

Not less than 5 business days prior to a hearing conducted, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. An ALJ may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

An ALJ conducting a hearing shall, at a minimum not be an employee of the Iowa Department of Education or the local educational agency involved in the education or care of the child; or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts; possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

The party requesting the due process hearing, the appellant, shall not be allowed to raise issues at the due process hearing that were not raised in the notice unless the other party agrees otherwise. A parent or agency shall request an impartial due process hearing within 2 years of the date the

parent or agency knew or should have known about the alleged action that forms the basis of the complaint. The timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

A decision made by an ALJ shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, an ALJ may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

- impeded the child's right to a free appropriate public education;
- significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- caused a deprivation of educational benefits.

This shall not be construed to preclude an ALJ from ordering a local educational agency to comply with procedural requirements under this section. Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State of Iowa.

Safeguards

Any party to a hearing or an appeal shall be accorded--

- (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and
- (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions shall be made available to the public consistent with the requirements relating to the confidentiality of data, information, and records); and shall be transmitted to the special education advisory panel.

Administrative Procedures

A decision made in a due process hearing or a hearing involving placement in an alternative educational setting shall be final, except that any party involved in such hearing may appeal such decision. Any party aggrieved by the findings and decision made regarding a due process hearing or hearing involving placement in alternative educational setting, and any party aggrieved by the findings and decision, shall have the right to bring a civil action with respect to the complaint presented, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy. The party bringing the action shall have 90 days from the date of the decision of the ALJ to bring such an action. Iowa has no explicit time limitation in statute for such actions. However, a party is strongly urged to consult legal counsel on this point.

Maintenance of Current Educational Placement

Except for placement during appeals involving placement in alternative educational setting, during the pendency of any proceedings conducted according to IDEA, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

Placement in Interim Alternative Educational Setting

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. School personnel may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in state eligibility requirements (612(a)(1)) although it may be provided in an interim alternative educational setting.

A child with a disability who is removed from the child's current placement (referring to the interim alternative educational setting, irrespective of whether the behavior is determined to be a manifestation of the child's disability) or referring to above paragraph shall continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Except as described in the first paragraph above, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP. If the local educational agency, the parent, and relevant members of the IEP Team determine that either is applicable, the conduct shall be determined to be a manifestation of the child's disability.

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

- conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
- in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

- carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section. The interim alternative educational setting shall be determined by the IEP Team.

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

An ALJ shall hear, and make a determination regarding, an appeal requested when disagreeing with any decision regarding placement, or the manifestation determination or the district believes maintaining the current placement would substantially likely result in injury to the child or others.

In making the determination the ALJ may order a change in placement of a child with a disability. In such situations, the ALJ may return a child with a disability to the placement from which the child was removed; or order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

When an appeal has been requested by either the parent or the local educational agency the child shall remain in the interim alternative educational setting pending the decision of the ALJ or until the expiration of the time period provided for (found in second paragraph above), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

- the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- the parent of the child has requested an evaluation of the child; or
- the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

If a local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

Nothing shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. An agency reporting a crime

committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

Definitions include:

- Controlled Substance. The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- Illegal Drug. The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- Weapon. The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.
- Serious Bodily Injury. The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Rule of Construction

Nothing shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the pertinent procedures shall be exhausted to the same extent as would be required had the action been brought under this part.

Transfer of Parental Rights at Age of Majority

When a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under Part B.

In Iowa the age of majority is reached on three occasions:

- on the minor's 18th birthday,
- on the date of a minor's marriage, or
- upon being "tried, convicted and sentenced as an adult and committed to the custody of the director of the department of corrections...."

Electronic Mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

Separate Complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Consent

It is the policy of the State of Iowa to comply with the Individuals with Disabilities Education Act provisions on consent, including revocation of consent.

Consent Defined. Iowa rules define consent and its revocation as follows:

"Consent" is obtained when all of the following conditions are satisfied:

- a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

If a parent of a child revokes consent, in writing, for the child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Consent Required. Consistent with state and federal statutes and regulations, it is the policy of the state of Iowa that consent is required for initial evaluations and reevaluations, for initial

provision of special education services, and for release of personally identifiable information about a child when consent is required by FERPA or by the IDEA, and for access to Medicaid for payment.

Specific Provisions on Consent for Evaluation and Services. Consistent with the 2008 IDEA regulation amendments, and the Iowa Department of Education's declaratory ruling on the subject, the following is the policy of the state of Iowa.

•*Parental consent for initial evaluation.*

The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules), obtain informed consent from the parent of the child before conducting the evaluation. Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services. The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

- (1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- (2) The rights of the parents of the child have been terminated in accordance with state law; or
- (3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in the Part B regulations and this policy, including mediation procedures or due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent. The public agency does not violate its obligation under rules relating to child find and initial evaluations if it declines to pursue the evaluation under this paragraph.

•*Parental consent for services.*

A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The public agency must make reasonable efforts to

obtain informed consent from the parent for the initial provision of special education and related services to the child. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

- (1) May not use the procedural safeguards in Part B regulations and this policy, including mediation procedures or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- (2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
- (3) Is not required to convene an IEP team meeting or develop an IEP for the child.

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

- (1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
- (2) May not use the procedural safeguards in Part B regulations or this policy, including mediation procedures or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- (3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (4) Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

•*Parental consent for reevaluations.*

Subject to the exception below, each public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described above. The public agency does not violate its obligation under child find or evaluation rules if it declines to pursue the evaluation or reevaluation.

Exception. The informed parental consent described need not be obtained if the public agency can demonstrate that (1) it made reasonable efforts to obtain such consent; and (2) the child's parent has failed to respond.

•*Other consent requirements.*

Parental consent is not required before:

- (1) A review of existing data as part of an evaluation or a reevaluation; or
- (2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

In addition to the parental consent requirements described above, the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

A public agency may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described above; and the public agency is not required to consider the child as eligible for services under Part B rules and the State's policy for parentally-placed nonpublic school students with disabilities.

To meet the reasonable efforts requirements in this policy, the public agency must document its attempts to obtain parental consent using the procedures used for documenting the holding of an IEP team meeting without a parent in attendance.

IDEA State Complaints

The Iowa Department of Education has a policy of investigating written state complaints alleging violations of the IDEA, consistent with the rules for such state complaints in the Code of Federal Regulations.